

## CHAPTER 50 PROCEDURES

[ORD 4224; September 2002]

### 50.05. Initiation of an Application

1. An application subject to a Type 1, Type 2, or Type 3 procedure may be filed by:
  - A. The owner or the contract purchaser of the subject property, or any person authorized in writing to act as agent of the owner or contract purchaser.
  - B. The City Council, Mayor, or Director, as to property owned by the City, including public right of way and easements, or which the City intends to acquire.
  - C. Public agencies that own the property or have passed a resolution declaring that they intend to exercise their statutory authority to condemn the property.
2. A Text Amendment application subject to a Type 4 procedure may be filed by an interested person, City Council, Mayor, or Director.
3. A Zone Change application subject to a Type 1, Type 3, or Type 4 procedure may be filed by the City Council, Mayor, or Director. [ORD 4265; September 2003]

**50.10. Withdrawal of an Application**

1. An applicant may withdraw an application before the application is deemed complete.
2. An applicant may withdraw an application previously deemed complete at any time prior to adoption of a final City decision if the Director determines that:
  - A. The owners or contract purchasers or the interest holders in the property consent in writing to withdraw the application.
  - B. No violation of this Code has been identified on the subject property and processing of the application would not correct the identified violation.
3. The Director may withdraw any City initiated application at any time.
4. If an application is withdrawn after public notice has been mailed, the Director shall send written notice stating the application has been withdrawn to all persons to whom notice of the application or hearing has been sent. This provision shall not apply to legislative applications that require Citywide mailed notice.
5. Once an application has been withdrawn, the application fees shall be refunded by the following formula:
  - A. Application withdrawn prior to being deemed complete: 85%.
  - B. Application withdrawn prior to publication or distribution of public notice: 50%.
  - C. Application withdrawn after publication or distribution of public notice: 0%.
6. For withdrawal of appeals, refer to Section 50.89 of this Code.

**50.15. Classification of Applications**

1. An application shall be subject to the procedure type specified in the Code, if any. If the Code does not specify a procedure type for a given application and another procedure is not required by law, the Director shall determine the appropriate procedure based on the following guidelines. Where two or more procedure types could be applied to a particular application, the selected procedure will be the type providing the broadest notice and opportunity to participate.
  - A. A Type 1 procedure typically involves an application that is subject to non-discretionary criteria or criteria that require the exercise of professional judgment only about technical issues.
  - B. A Type 2 procedure typically involves an application that is subject to criteria that require the exercise of limited discretion about non-technical issues and about which there may be limited public interest.
  - C. A Type 3 procedure typically involves an application that is subject to criteria that require the exercise of substantial discretion and about which there may be broad public interest, although the application applies to a limited number of land owners and properties.
  - D. A Type 4 procedure typically involves the adoption, implementation or amendment of policy or law by ordinance. The subject of a Type 4 procedure generally applies to a relatively large geographic area containing many property owners.

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2. When an applicant submits more than one complete application for a given proposal, where each application addresses a separate set of code requirements and the applications are subject to different procedure types, all of the applications are subject to the procedure type of the application which requires the broadest notice and opportunity to participate. For example, a Type 2 application will be consolidated with a Type 3 application for the same proposal on the same site, in which case, the Type 2 application will be reviewed by the decision making authority of the Type 3 application. The decision making authority's action on the Type 2 application will be based on the approval criteria governing the Type 2 application. An appeal of the decision will be processed according to the provisions of Section 50.70 of this Code.

In the event that the completed applications involve applications where the decision making authority is a combination of either the Director, Board of Design Review, or Planning Commission, the decision making authority will be the Planning Commission.

Notwithstanding any other provision and at no cost to the applicant, the Director may choose to combine multiple applications for the same development as a way to increase the efficiency of development review. [ORD 4265; September 2003]

3. The Director shall determine the appropriate decision making authority between the Planning Commission and the Board of Design Review for Adjustment, Text Amendment, Tree Plan, and Variance applications. Such determination will be based upon the characteristics of the proposal and the associated application, if any. The determination of the Director may be appealed directly to the City Council pursuant to Section 50.70 of this Code.
4. Notwithstanding the Director's determination of procedure type, Type 1, 2, or 3 but not Type 4, an applicant may choose to have an application at the time of submittal be subject to a procedure type requiring broader notice and opportunity to participate provided the applicant pays the appropriate fee for the selected procedure type and the Director determines that statutory timelines for reaching a final decision can be satisfied.

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5. Notwithstanding any other provision, and, at no additional cost to the applicant, the Director may choose to process a Type 2 application under the Type 3 procedure in order to provide greater notice and opportunity to participate than would otherwise be required, or in order to comply with the time requirements for reviewing development applications pursuant to ORS 227.178. The decision making authority's action on the Type 2 application will be based on the approval criteria governing the Type 2 application.



**50.20. Pre-Application Conference**

1. With the exception of an application filed by the City, a pre-application conference shall be required for all proposals which require Type 2, Type 3, or Type 4 applications. A pre-application conference is optional for an applicant for proposals which require only Type 1 applications.
2. The purpose of the pre-application conference is to acquaint the City and outside agencies and service providers with a potential application, and to acquaint the applicant with the requirements of this Code, the Comprehensive Plan, and other relevant criteria and procedures. It is not an exhaustive review of all potential issues, and the conference does not bind or preclude the City from enforcing all applicable regulations or from applying regulations in a manner differently than may have been indicated in the pre-application conference.
3. The City will schedule and conduct the pre-application conference within twenty-one (21) calendar days of receipt of a request for a pre-application conference. Notwithstanding application completeness requirements, if a required pre-application conference is not conducted within the twenty-one day time period due to no fault of the applicant, the applicant may elect to proceed with an application without a pre-application conference.
4. To initiate the pre-application conference, an applicant shall submit a completed form provided by the Director for that purpose, the relevant fee, and copies of all information required by the relevant Section of the Code or specified in writing by the Director.

The Director shall coordinate the involvement of City staff responsible for planning, development review, roads, drainage, and other subjects, as appropriate, in the pre-application review process. The Director shall also invite outside agencies and service providers, as appropriate, to participate in the pre-application conference.

5. Within approximately fourteen (14) calendar days after a pre-application conference, the Director shall mail to the applicant, or the applicant's agent, a written summary of the conference. The Director shall mail a copy of the summary to any other person who requests one and pays the City's mailing and photocopying costs. The purpose of the written summary is to provide a preliminary assessment of a proposal and is not to be construed as a final recommendation or decision by the City or by any other outside agency or service provider on the merits of the proposal. The pre-application conference written summary shall:

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- A. Summarize the contemplated use and relevant characteristics of the proposal.
  - B. Identify necessary application submittal requirements.
  - C. Identify the relevant approval criteria and development regulations, with a disclaimer that the approval criteria and development regulations in effect at the time an application is received will control and that such approval criteria and development regulations may change.
  - D. Identify specific additional information that is needed to respond to the relevant criteria and development regulations or is recommended to respond to other issues.
  - E. Identify applicable application fees, with a disclaimer that fees are subject to change and that the fees in effect at the time a complete application is received will control.
  - F. Identify information that may be relevant to the proposal and that may be in the possession of the City or other agencies of which the City is aware, such as:
    1. Comprehensive Plan map designation and zoning on and adjacent to the property, which is the subject of the pre-application conference.
    2. Physical development limitations, such as steep or unstable slopes, wetlands, water bodies, or sensitive resource areas that exist on and in the vicinity of the subject property.
    3. Other applications of which the City is aware that have been approved or are pending for the property and in the vicinity of the property that may affect or be affected by a proposal.
6. If a complete application relating to a proposed development action that was the subject of a pre-application conference has not been submitted within one year of the conference, the applicant shall schedule a current pre-application conference.



**50.25. Application Completeness**

1. A complete application is one which contains the information required by the Director to address the relevant criteria, development requirements, and procedures of this Code. Non-Discretionary Annexation Related Zoning Map Amendment and Discretionary Annexation Zoning Map Amendment applications processed by the City shall be determined to be complete upon submittal of a valid annexation petition or executed annexation agreement. All other complete application shall consist of the requisite number of copies of the following: [ORD 4265; September 2003]
  - A. A completed original application form provided by the Director and application checklist provided by the Director, signed by:
    1. The applicant.
    2. If the applicant is not the owner, the owner of the property, or the authorized agent of the property owner. If an authorized agent, a written statement made by the owner of the property shall be submitted stating that the agent is authorized to sign on the owner's behalf.
    3. If the applicant is exercising its statutory authority to condemn property, the representative of the public agency accompanied by written documentation of such condemnation or intent to condemn the property.
    4. Property owner signatures are not required for City initiated Type 4 Text Amendment applications and City initiated Type 1, Type 3, and Type 4 Zoning Map Amendments. [ORD 4265; September 2003]
  - B. A written statement, supported by substantial evidence, that identifies the criteria and development regulations considered relevant to the application, states the facts alleged to show that the application complies with applicable criteria and development regulations, and explains why the application should be approved based on the criteria and development regulations and facts set forth in the application. In addition to addressing applicable criteria and development regulations relevant to the application type, the written statement shall address all the technical criteria specified in Section 40.03 (Facilities Review Committee) of the Code. [ORD 4265; September 2003]

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- C. The Director may require an applicant to submit information in addition to that required on the form to aid in deciding whether an application satisfies applicable criteria and development regulations. The Director shall attempt to identify additional necessary information in the pre-application conference.
  - D. The information required by Section 50.30.4 regarding Neighborhood Meeting requirements, if applicable.
  - E. For a Type 2, Type 3, or Type 4 application, a copy of the pre-application conference summary.
  - F. Documentation from Clean Water Services stating that water quality will not be adversely affected by the proposal.
  - G. The applicable fee in effect at the date of submittal.
- 2. To enable the Director to determine whether an application is complete, an applicant shall submit the requisite number of copies, as determined by the Director.
  - 3. The Director may defer collection of application fees during review of the application for completeness; provided, an application shall not be deemed complete until the City has received all required fees.
  - 4. The Director shall advise the applicant in writing whether an application is complete by sending a completeness notice by first class mail within thirty (30) calendar days after the City receives an application. To comply with this completeness notice requirement, the completeness notice must be postmarked by the thirtieth day.
    - A. If an application is incomplete, the completeness notice shall list what information is missing.
    - B. The completeness notice shall include a form, designed to be returned to the Director by the applicant indicating whether or not the applicant intends to amend or supplement the application, and instructing the applicant to mail, facsimile, or deliver the form or written equivalent to the Director so that the Director receives it before the thirty (30) calendar day completeness review period expires.

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5. Incompleteness shall be based solely on failure to pay required fees, failure to address the relevant criteria or development regulations, or failure to supply required information and shall not be based on differences of opinion as to quality or accuracy. Determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.
6. The Director may waive application requirements that in the Director's opinion are not necessary to show an application complies with relevant criteria and development regulations and may modify application requirements based on the nature of the proposed application, development, site, or other factors. The City shall specifically identify any such waiver in the pre-application conference written summary or other written correspondence.
7. The application will be deemed complete for the purpose of this section upon receipt by the Community Development Department of:
  - a. All the missing information;
  - b. Some of the missing information and written notice from the applicant that no other information will be provided; or
  - c. Written notice from the applicant that none of the missing information will be provided.

[ORD 4282; January 2004]

8. Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 calendar days from the date that the application is determined to be or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to subsection 9 or unless State law provides otherwise. [ORD 4282; January 2004]
9. The 120 calendar day time line specified in Section 50.25.8 may be extended at the written request of the applicant. The total of all extensions may not to exceed 240 calendar days from the date the application was deemed complete. [ORD 4282; January 2004]

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10. The applicant may amend the application up to and including fourteen (14) calendar days after the application has been deemed complete. Amendments to an application submitted more than fourteen (14) calendar days after the application is deemed complete may be determined by the Director to be so substantial that the application should be treated as having been refiled. In such a case, the Director shall provide the applicant with the following options: provide the City with a waiver of the 120-day timeframe set forth in ORS 227.178 of a minimum of fourteen (14) calendar days from the date the amendment was submitted; treat the application as having been refiled as of the date the amendment was submitted; or, decide the application on the basis of the applicant's materials without the amendment.
11. Pursuant to Section 50.25.3, an application will not be complete until the required fee has been received by the City. For any application which has been on file with the City for more than 180 calendar days and the applicant has not paid the required fee, the application will be deemed withdrawn.

**50.30. Neighborhood Review Meeting**

1. The purpose of the Neighborhood Review Meeting is to allow neighbors, representatives from the Neighborhood Association Committee (hereinafter referred to as NAC), and interested persons an opportunity to become familiar with the proposal and to identify any associated issues. The Neighborhood Review Meeting is intended to assist in producing applications that are responsive to neighborhood concerns, and to reduce the likelihood of delays and appeals. The City expects an applicant to take into consideration the reasonable concerns and recommendations of the neighborhood when preparing an application. The City expects the neighbors and NAC to work with the applicant to provide reasonable concerns and recommendations.
2. Prior to submittal of an application subject to a Type 3 procedure, the applicant shall provide an opportunity to meet with neighboring property owners, residents and businesses (hereinafter collectively referred to as “neighbors”) as well as representatives from the NAC within whose boundaries the site is located or within the notice radius to review the proposal. The applicant shall not be required to hold more than one Neighborhood Review Meeting provided such meeting is held within six-months prior to submitting an application for one specific site. This requirement does not apply to applications required by Design Review Three threshold number 7 (Section 40.20.15.3.A.7) or applications for Quasi-Judicial Zoning Map Amendment (Section 40.97.15.1) or Discretionary Annexation Related Zoning Map Amendment (Section 40.97.15.4). [ORD 4332; November 2004]
3. Procedures.
  - A. Except as otherwise provided in this section, the applicant shall select the meeting time and place according to the preference indicated by the relevant NAC. Preference should be given to a regularly scheduled meeting time of the NAC in which the project is located. The starting time selected shall be limited to a weekday evening after 6:00 p.m. or a weekend at any reasonable time and shall not occur on a National holiday. The meeting shall be held at a location open to the public and in compliance with the Americans with Disabilities Act within the boundaries of the NAC or at a similar location within the City of Beaverton. A sign at least 22” x 28” in size with minimum 2” lettering shall be placed at the main entrance of the building where the meeting will take place at least one hour prior to the meeting. Such sign will announce the meeting, that the meeting

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is open to the public and that interested persons are invited to attend. This sign shall be removed upon conclusion of the meeting by the applicant.

- B. The applicant shall send by regular mail a written notice announcing the Neighborhood Review Meeting to: the Director, property owners within 500 feet of the property involved in the anticipated application and to representatives of all NACs whose boundaries are within 500 feet of the subject property. The notice shall include the date, time and location of the meeting and briefly discuss the nature and location of the proposal. The notice shall be mailed not less than 20 calendar days prior to the meeting date. The Director shall maintain on file in the Community Development Department, current addresses of NAC Officers and/or representatives and related NAC information, including regularly scheduled or monthly meeting dates, times and locations.

The mailing list shall be based on the most recent property tax assessment rolls of the Washington County Department of Assessment and Taxation. At the request of the applicant, and upon payment of the applicable fee, the City will provide the required mailing list.

- C. Not less than 20 calendar days prior to the Neighborhood Review Meeting, the applicant shall post a notice on the property which is subject of the proposed application. The notice shall be posted within 50 feet of an adjoining public right-of-way in a manner that can be read from the right-of-way. The notice shall state that the site may be subject to a proposed development and shall set forth the name of the applicant and a telephone number where the applicant can be reached for additional information. The site shall remain posted until the conclusion of the Neighborhood Review Meeting. The applicant may purchase a second sign from the City or create a sign to post at the Neighborhood Review Meeting location. [ORD 4312; June 2004]

Standard signs are available from the City upon payment of a fee. The City will not be responsible for posting of any signs.

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- D. At the Neighborhood Review Meeting, the applicant shall describe the proposed application to persons in attendance. The attendees may identify any issues that they believe should be addressed in the proposed application and recommend that those issues be submitted for City consideration and analysis.

At the request of the applicant and upon payment of a fee, the City will provide a facilitator for the Neighborhood Review Meeting.

- E. At the Neighborhood Review Meeting, the applicant shall take notes of the discussion on the proposed application. After the meeting and before submitting an application to the City, the applicant shall send a copy of the meeting notes to the Chairperson of the NAC in which the project is to be located by certified mail.

- 4. To comply with this section, an applicant shall submit the following information with the application:

- A. A copy of the notice sent to surrounding property owners and the NAC Representatives as described in Section 50.30.3.B.
- B. A copy of the mailing list used to send out meeting notices as described in Section 50.30.3.B.
- C. A written statement containing the information posted on the property as described in Section 50.30.3.C.
- D. An affidavit of mailing and posting notices as described in Sections 50.30.3.A through C.
- E. Copies of written materials and 8.5" x 11" size plans presented at the Neighborhood Review Meeting.
- F. Notes of the meeting, including the meeting date, time, and location, the name and address of those attending, and a summary of oral and written comments received.
- G. A certified mail receipt indicating mailing of the meeting notes to the Chairperson of the NAC.

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- H. If responses to the meeting notice were not received by the applicant and no one attended the Neighborhood Review Meeting or persons in attendance made no comments, the applicant shall submit evidence as indicated above, with the notes reflecting the absence of comment, attendance, or both.
- 5. Failure of a property owner to receive notice shall not invalidate the Neighborhood Review Meeting proceedings.



**50.35. Type 1**

1. Except for Non-Discretionary Annexation Related Zoning Map Amendment applications, the decision making authority for all Type 1 applications shall be the Director. For Non-Discretionary Annexation Related Zoning Map Amendment applications, the decision making authority shall be the City Council.
2. Except for Non-Discretionary Annexation Related Zoning Map Amendment applications, the decision making authority shall approve, approve with conditions, or deny an application subject to a Type 1 procedure within approximately twenty eight (28) calendar days after the date the application was deemed or determined to be complete. In the case of a Type 1 application for a site that is identified on the Local Wetland Inventory (LWI), the decision shall be made within forty (40) calendar days. In either case, an applicant may request in writing a continuance of the time for decision by the Director, not to exceed a total of 180 calendar days from the date the application was deemed or determined to be complete. The decision making authority shall issue a decision prior to the conclusion of the continuance of time. The decision making authority may consider new evidence the applicant introduces with or after such request for continuance. [ORD 4312; June 2004]
3. The written notice of decision for Type 1 applications, except for Non-Discretionary Annexation Related Zoning Map Amendment applications, shall be mailed to the applicant and include the following information:
  - A. A brief summary of the proposal and the application which is the subject of the decision, the decision and any conditions of approval.
  - B. A description of the site reasonably sufficient to inform the reader of its location including site address, if available, map and tax lot number, site zoning, and name of the NAC in which the proposal is located.
  - C. A statement of the facts upon which the decision making authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion.
  - D. The decision to approve or deny the application, and, if approved, any conditions of approval necessary to ensure compliance with the applicable criteria.

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- E. A statement that the decision is final, unless appealed as provided in Section 50.60 within twelve (12) calendar days after the date of the notice or may be modified pursuant to Section 50.95. The notice shall state in boldface type the date and time by which an appeal must be filed. The statement shall describe the requirements for filing an appeal of the decision.
  - F. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.
- 4. If an applicant does not intend to appeal the decision, the applicant may complete a form stating such intention. Upon submittal of said form to the City, the decision shall be final and no further appeal period shall be necessary.
  - 5. In the case of Non-Discretionary Annexation Related Zoning Map Amendment applications, if the Council intends to adopt an ordinance to change a zoning designation, the City Attorney shall prepare same. Ordinances shall thereafter be adopted pursuant to the City Charter. The City Council shall adopt or approve written findings which demonstrate that the approval complies with applicable approval criteria.
  - 6. In the case of Non-Discretionary Annexation Related Zoning Map Amendment applications, the written notice of decision shall include the following:
    - A. A statement that no discretion was exercised in the assignment of the zoning district designation and that the assigned zoning district designation is consistent with the Washington County - Beaverton Urban Planning Area Agreement (UPAA) in effect at the time of application.
    - B. A statement that the decision is final but may be appealed to a court of competent jurisdiction. [ORD 4265; September 2003]
    - C. A statement that the complete case file is available for review. The statement shall list when and where the case file is available and the name and telephone number of the City representative to contact for information about the case.

**50.40. Type 2**

1. The decision making authority for a Type 2 application shall be the Director.
2. Approximately seven (7) calendar days after the application has been determined to be or deemed complete, the Director shall mail a written notice to:
  - A. The applicant and the property owner.
  - B. The NAC in which the subject property is located and any other NAC whose boundaries are within three hundred (300) feet of the subject property.
  - C. Owners of property within three hundred (300) feet of any property line that is the subject of the application. The most recent property tax assessment roll of the Washington County Department of Assessment and Taxation shall be used for determining the property owner of record. The failure of a property owner to receive notice does not invalidate the decision.
3. The written notice of the pending application shall include the following information:
  - A. The case file number for the application.
  - B. A description of the site reasonably sufficient to inform the reader of its location including map and tax lot number, and if available, site address, site zoning, and name of the NAC in which the proposal is located.
  - C. A map showing the subject property in relation to other properties.
  - D. A summary of the application.
  - E. A listing of the applicable approval criteria by Development Code section number.
  - F. When and where information about the application may be examined and the name and telephone number of the City representative to contact about the application.

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- G. A statement that a meeting of the Facilities Review Committee will occur on a specified date with the applicant to discuss technical issues associated with the application and the date of such meeting.
  - H. A statement that interested parties can submit written comments, but, to be considered, the City must receive those comments no later than the comment closing date, which is a specific date established by the Director and which is approximately twenty eight (28) calendar days from the date the application is determined to be or deemed complete. The comment closing date shall be listed in boldface type.
  - I. A statement that the decision shall be made after the comment closing date.
- 4. Within approximately seven (7) calendar days after the application has been determined to be or deemed complete and in no case less than twenty (20) calendar days before the decision making authority's decision, the Director shall publish in a newspaper of general circulation in the City of Beaverton a summary of the application, the comment closing date on the application, the date of the Facilities Review Committee technical meeting with the applicant, and the date on which a decision will be made on the application.
  - 5. Not more than ten (10) calendar days after the application has been determined to be or deemed complete, the applicant shall post on the site at least one (1) notice signboard provided by the Director for that purpose. The signboard shall be posted in a conspicuous place visible to the public on or in the vicinity of the property subject to the application. The signboard shall state with minimum two (2)-inch high letters the case file number and the telephone number where City staff can be contacted for more information.
  - 6. Subject to the limitations set forth in Section 50.25.10, the applicant may amend the application during a period of time of up to and including fourteen (14) days after the application has been determined to be or deemed complete.

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7. Approximately twenty eight (28) calendar days after the application has been determined to be or deemed complete, the Director shall convene the Facilities Review Committee to review technical aspects of the application with the applicant.
8. Within approximately thirty five (35) calendar days after the application has been determined to be or deemed complete, the applicant shall submit to the Director an affidavit certifying where and when the notices referred to in Section 50.40.5 were posted.
9. Within approximately seven (7) calendar days after the Facilities Review Committee technical meeting, the Facilities Review Committee shall forward a written report to the Director.
10. Within approximately fourteen (14) calendar days after the Facilities Review Committee technical meeting, the Director shall issue a written decision on the application to the applicant, the property owner, the NAC in which the subject property is located, and interested parties that submitted written comments prior to or on the comment closing date; provided, [ORD 4265; September 2003]
  - A. The decision making authority shall consider the application, the applicant's supplement to or amendment of the application, if any, and the timely and relevant comments on the application. The decision making authority may consider comments and responses received from the applicant, the public, or both after the comment closing period on the proposal; and
  - B. An applicant may request in writing a continuance of time, not to exceed a total of 180 calendar days from the date the application was determined to be or deemed complete. The decision making authority shall issue a decision prior to the conclusion of the continuance of time.
11. A decision shall include:
  - A. A brief summary of the proposal and the application which is the subject of the decision, the decision, and any conditions of approval.

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- B. A description of the site reasonably sufficient to inform the reader of its location including site address, and if available, map and tax lot number, site zoning, and the NAC in which the proposal is located.
- C. A statement of the facts upon which the decision making authority relied to determine whether the application satisfied or failed to satisfy each applicable approval criterion and assurance of compliance with the approval criteria.
- D. The decision to approve or deny the application and, if approved, any conditions of approval necessary to ensure compliance with applicable criteria.
- E. A statement that the decision is final, unless appealed as provided in Section 50.65 within twelve (12) calendar days after the date of the decision or may be modified pursuant to Section 50.95. The notice shall state in boldface type the date and time by which an appeal must be filed. The statement shall describe the requirements for filing an appeal of the decision.
- F. A statement that the complete case file, including findings, conclusions and conditions of approval, if any, is available for review. The notice shall list when and where the case file is available and the name and telephone number of the City representative to contact about reviewing the case file.

**50.45. Type 3**

1. Except for Street Vacation application, the decision making authority for all Type 3 applications shall be either the Planning Commission or Board of Design Review. For Street Vacation application, the decision making authority shall be the City Council.
2. Within approximately seven (7) calendar days after the application has been deemed complete, the Director shall mail a written notice to:
  - A. The applicant and the property owner.
  - B. The NAC in which the subject property is located and to any other NAC whose boundaries are within five hundred (500) feet of the subject property.
  - C. Owners of property within five hundred (500) feet of the property that is the subject of the application. The most recent property tax assessment rolls of the Washington County Department of Assessment and Taxation shall be used for determining the property owner of record. The failure of a property owner to receive notice does not invalidate the decision.
3. The written notice of the pending application shall include the following information:
  - A. The case file number for the application.
  - B. A description of the site reasonably sufficient to inform the reader of its location including map and tax lot number, and if available, site address, site zoning, and name of the NAC in which the proposal is located.
  - C. A map depicting the subject property in relation to other properties.
  - D. The nature of the application and the proposed use. In the case of a zone change, the nature of the uses which could be authorized.
  - E. A listing of the applicable approval criteria by Development Code section number.

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- F. When and where information about the application may be examined and the name and telephone number of the City representative to contact about the application.
  - G. A statement that a meeting of the Facilities Review Committee will occur on a specified date with the applicant to discuss technical issues associated with the application and the date of such meeting.
  - H. The date, time and location of the hearing before the decision making authority, and a statement that the hearing will be conducted in accordance with the adopted rules of procedure.
  - I. A statement that the decision will be made after the hearing closes.
  - J. A statement that failure to raise an issue in a hearing, by testifying in person or by letter, or failure to provide statements or evidence with sufficient specificity to afford the decision making authority an opportunity to respond to such issue, precludes appeal to the Land Use Board of Appeals on that issue.
  - K. A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) calendar days before the hearing, and a copy will be provided at reasonable cost.
  - L. A statement that a copy of the pre-application conference comments, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
4. Within approximately seven (7) calendar days after the application has been determined to be or deemed complete and in no case less than twenty (20) calendar days before the decision making authority's initial hearing, the Director shall publish in a newspaper of general circulation in the City of Beaverton a summary of the application, a date by which public comment on the application should be submitted to the Director, the date of the Facilities Review Committee technical meeting with the applicant, and the place, date, and time of the decision making authority's hearing on the application under review.



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5. In addition to the provisions of Sections 50.45.2, 50.45.4, and 50.45.8, the following noticing timelines shall apply for the following applications:
  - A. If the proposal is a Quasi-Judicial Zoning Map Amendment application (Section 40.97.15.1), the Director shall send the notice outlined in Section 50.45.3 by certified mail to the owner of property as shown on the current records of the Washington County Department of Assessment and Taxation which are subject to the proposed zone change at least thirty (30) days prior to the public hearing.
  - B. For any Zoning Map Amendment application which includes all or part of a mobile home or manufactured dwelling park, as defined in ORS 446.003, the Director shall mail the notice outlined in Section 50.45.3 to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least twenty (20) days but not more than forty (40) calendar days before the date of the initial hearing on the application. The applicant for such a zone change shall pay the costs of such notice, which shall be in addition to fees otherwise applicable to the application.
6. In addition to the noticing procedural requirements contained in Sections 50.45.2 through 50.45.4, a Street Vacation proposal shall be subject to the following procedures:
  - A. The newspaper notice of the proposed ordinance for street vacation described in Section 50.45.4 shall be published for at least two consecutive weeks prior to the public hearing.
  - B. A copy of the hearing notice described in Section 50.45.3 shall be made available in City Hall and the City Library.
  - C. At least fifteen (15) calendar days before the hearing for the street vacation, the applicant shall post a signboard, provided by the City at cost, at each terminus of the proposed street vacation. The sign shall contain the legend with minimum two inch (2") high letters "NOTICE OF STREET VACATION", the case number, the telephone number where City staff can be contacted for more information, and a statement that includes the date, time and place of the hearing of the City Council before whom the public may testify. The applicant is responsible for assuring that the sign is posted for a continuous period of at least fifteen (15) days.

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7. In addition to the noticing procedural requirements contained in Sections 50.45.2 through 50.45.4, an application for the demolition of a historic building or structure shall be subject to the following procedures:
  - A. The applicant has advertised such building for sale and/or removal from the site, with such advertisement to run once per week over two consecutive weeks, no less than seven days apart, in a newspaper of general circulation in the City of Beaverton.
  - B. The applicant has posted a sign on the property for a continuous period of at least thirty (30) calendar days prior to the hearing. The sign shall be provided by the City and be posted in a prominent and conspicuous place within ten feet of a public street abutting the premises on which the building is located, and shall contain the legend "THIS HISTORIC BUILDING TO BE DEMOLISHED", together with a statement that includes the date, time and place of the hearing of the decision making authority before whom the public may testify. The applicant is responsible for assuring that the sign is posted for a continuous period of at least thirty (30) days.
  - D. If after 30 calendar days no party interested in purchasing or moving the property has come forward to the property owner, the City, or both, the decision making authority shall hold a hearing.
  - E. None of the preceding procedures listed in Section 50.45.7.A through D shall apply to the demolition of a historic building or structure if the Building Official has ordered the removal or demolition of such building because the Building Official has determined the building or structure to be dangerous to life, health or property.

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8. Not less than twenty (20) calendar days before the decision making authority's hearing, the applicant shall post at least one (1) signboard provided by the Director for that purpose. The signboard shall be posted in a conspicuous place visible to the public on or in the vicinity of the property subject to the application. The signboard shall state with minimum two (2)-inch high letters the case number; the telephone number where City staff can be contacted for more information. In the case of Non-Discretionary Annexation Related Zoning Map Amendments and Discretionary Annexation Zoning Map Amendments processed by the City, no site posting shall be required. [ORD 4265; September 2003]
9. All documents and evidence relied upon by the applicant shall be submitted to the City and made available to the public at least seven (7) days prior to the hearing. Documents and evidence relied upon by the applicant which is submitted later than seven (7) days prior to the hearing shall be received, provided however, upon request of any interested person, the decision making authority shall continue the hearing to a date and time certain which is not less than seven (7) days later and permit persons to present and rebut new evidence, argument or testimony in response to the documents and evidence submitted by the applicant later than seven days prior to the hearing.
10. Within approximately twenty eight (28) calendar days after the application has been determined to be or deemed complete, the Director shall convene the Facilities Review Committee to review technical aspects of the application with the applicant.
11. Within approximately thirty five (35) calendar days after the application has been determined to be or deemed complete, the applicant shall submit to the Director an affidavit certifying where and when the notices were posted.
12. Within approximately seven (7) calendar days after the Facilities Review Committee technical meeting, the Facilities Review Committee shall forward a written report to the Director.
13. Approximately twenty-one (21) calendar days after the Facilities Review Committee technical meeting, the decision making authority's initial hearing on the application shall take place.

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14. At least seven (7) calendar days before the date of the initial hearing on the application, the Director shall make available to the public a copy of the staff report for review and inspection, and shall provide a copy of the staff report and recommendation to the decision making authority and to the applicant and property owner. The Director shall provide a copy of the staff report to the public at reasonable cost upon request.
15. Hearings before the Planning Commission or Board of Design Review shall be conducted in accordance with Section 50.55 through 50.58 of this Code. Hearing before the City Council shall be conducted in accordance with Section 50.85 through 50.88 of this Code. Hearings shall be recorded on audio only or audio and video tape.
16. At the conclusion of the hearing on each application, the decision making authority shall take one of the following actions:
  - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of date, time and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
  - B. Deny the application, approve the application, or approve the application with conditions.
    1. If the decision making authority takes action pursuant to Section 50.45.16.B, the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.45.17; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.
    2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.

50.45.16.

- C. In the case of Street Vacation, Quasi-Judicial Zoning Map Amendment, Discretionary Annexation Related Zoning Map Amendment applications, if the Council intends to adopt an ordinance to vacate a street or change a zoning designation, the City Attorney shall prepare same. An ordinance shall thereafter be adopted pursuant to the City Charter. The City Council shall adopt or approve written findings which demonstrate that the approval complies with applicable approval criteria.
17. After the public record closes, a written decision in the form of a land use order shall be prepared regarding the application. The land use order shall include:
- A. A listing of the applicable approval criteria by Development Code section number.
  - B. A statement or summary of the facts upon which the decision making authority relies to find the application does or does not comply with each applicable approval criterion and to justify any conditions of approval. The decision making authority may adopt or incorporate a staff report or written findings prepared by any party to the proceeding into the land use order to satisfy this requirement.
  - C. A statement of conclusions based on the facts and findings.
  - D. A decision to deny or to approve the application and, if approved, any conditions of approval necessary to ensure compliance with applicable criteria.
18. Within approximately seven (7) calendar days from the date that the decision making authority adopts a land use order, the Director shall cause the order to be signed, dated, and mailed to the applicant, the property owner, the NAC in which the subject property is located, and other persons who appeared orally or in writing before the public record closed. The land use order shall be accompanied by a written notice which shall include the following information:

50.45.18.

- A. Except for a Street Vacation application, a statement that the decision is final but may be appealed as provided in Section 50.70 within ten (10) calendar days after the date of the signed notice is dated and mailed. The appeal closing date, which is ten (10) days after the date the signed notice is dated and mailed, shall be set forth in boldface type. The statement shall generally describe the requirements for filing an appeal.
- B. In the case of a Street Vacation application, a statement that the decision is final, but may be appealed to the Land Use Board of Appeal as provided in ORS 197.805 through ORS 197.860.
- C. A statement that the complete case file is available for review. The statement shall list when and where the case file is available and the name and telephone number of the City representative to contact for information about the case.

**50.50. Type 4**

1. The initial decision making authority for Type 4 applications shall be either the Planning Commission or the Board of Design Review. The Commission's or Board's decision on a Type 4 application shall be a written recommendation, which is forwarded to the City Council. The City Council shall make the final decision on Type 4 applications as set forth in this Section.
2. Not more than forty (40) nor less than twenty (20) calendar days before the date of the initial hearing of the decision making authority on an ordinance that proposes to legislatively change the zoning map or to amend the text of the Development Code, the Director shall mail notice of the hearing to:
  - A. The applicant if other than the City.
  - B. All NAC in whose area there is property that in the Director's opinion could be affected by the proposed ordinance, if adopted.
  - C. Owners of property within the City for which the proposed ordinance, if adopted, may in the Director's opinion affect the permissible uses of land.
    1. The most recent property tax assessment roll of the Washington County Department of Assessment and Taxation shall be used for determining the property owner of record. The failure of a property owner to receive notice does not invalidate the decision.
    2. If a person owns more than one property that could be affected by the proposed ordinance if adopted, the Director may mail that person only one notice of the hearing.
    3. The notice of the initial hearing in a Type 4 procedure shall include at least the following information:
  - D. If required by ORS 227.186, a statement in bold type across the top of the first page of the notice that reads as follows: "This is to notify you that the City shall consider a proposed land use regulation that may affect the permissible uses of your land." [ORD 4312; June 2004]

50.50.3.

- E. The date, time, and location of the hearing.
  - F. The nature and purpose of the hearing.
  - G. The case file number, title, or both of the proposed ordinance to be considered at the hearing.
  - H. A listing of the applicable approval criteria by Development Code and Comprehensive Plan section numbers.
  - I. A statement that a copy of the staff report will be available for inspection at no cost at least seven (7) calendar days before the hearing, and a copy will be provided at reasonable cost, and the name and telephone number of a City representative to contact about the ordinance.
  - J. A statement that failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision making authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals on that issue.
  - K. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
  - L. If applicable, a statement that the ordinance is a result of an order of the Land Conservation and Development Commission or Metro.
4. At least ten (10) calendar days before the Planning Commission or Board of Design Review's initial hearing in a Type 4 procedure, the Director shall:
- A. Publish in a newspaper of general circulation in the City of Beaverton a summary of the hearing notice, including the date, time, and location of the hearing and the number and nature of the ordinance to be considered.
  - B. Make copies of the hearing notice available in at least City Hall and the City Library.



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5. At least seven (7) calendar days before the initial hearing in a Type 4 procedure, the Director shall publish a written staff report and recommendation regarding the ordinance and shall make available to the public a copy of the staff report for review and inspection. The Director shall provide a copy of the staff report at reasonable charge to members of the public upon request.
6. Initial hearings shall be conducted in manner specified in Section 50.55 through 50.58 of this Code. Hearings shall be recorded on audio or audio and video tape.
7. At the conclusion of the hearing on a Type 4 procedure, the following options are available to the decision making authority: [ORD 4265; September 2003]
  - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of date, time, and location certain of the continued hearing is not required to be mailed, published or posted, unless the hearing is not continued to a date, time, and location certain in which case notice of the continued hearing shall be given as though it was the initial hearing.
  - B. Hold open the public record for the receipt of additional evidence, argument, or both to a date and time certain which is not less than seven (7) calendar days after the hearing. The decision making authority shall state where additional written evidence and testimony may be sent, and shall announce any limits on the nature of the evidence that will be received while the hearing record remains open.
  - C. Recommend that the City Council reject or adopt the ordinance with or without certain changes, conditions, or both, together with a written justification for the recommendation; provided, the hearing may be continued to a date, time, and location certain for the purpose of considering such a written recommendation without receiving new evidence or argument.
8. After the public record closes, a written decision in the form of a land use order shall be prepared regarding the application.

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9. Within approximately seven (7) calendar days from the date that the decision making authority adopts a land use order, the Director shall cause the order to be signed, dated, and mailed to the persons who appeared orally or in writing before the decision making authority prior to the closing of the public record ("persons of record"). The land use order shall be accompanied by a written notice which shall include the following information:
  - A. A statement that the recommendation may be appealed as provided in Section 50.75 within ten (10) calendar days after the date the signed notice is dated and mailed. The appeal closing date, which is ten (10) days after the date the signed notice is dated and mailed, shall be listed in boldface type. The statement shall generally describe the requirements for filing an appeal.
  - B. A statement that the complete case file is available for review. The statement shall list when and where the case file is available and the name and telephone number of the City representative to contact for information about the case.
10. Not more than thirty (30) calendar days after the decision making authority issues its land use order and not less than ten (10) calendar days before the date of City Council consideration of the decision making authority's recommendation if the decision making authority's land use order was not appealed, the Director shall mail notice to the persons of record. The notice shall contain at least the following information:
  - A. The date, time, and location of the City Council meeting.
  - B. The nature and purpose of the City Council meeting.
  - C. The case file number, title, or both of the land use order to be considered at the City Council meeting.
  - D. A statement that a copy of the land use order is available for inspection at no cost at least (7) days prior to Council consideration, and a copy will be provided at reasonable cost, and the telephone number of a City representative to contact about the ordinance.

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11. Consideration by the City Council of the Planning Commission's or the Board of Design Review's recommendation on a land use order shall be conducted in accordance with the rules of procedure adopted by the Council, except as otherwise required by statute. The process for filing an appeal to City Council from the decision making authority's land use order is set forth in Section 50.75.
12. In the absence of an appeal from the Planning Commission's or the Board of Design Review's recommendation, at the conclusion of the City Council consideration of the decision making authority's land use order in a Type 4 procedure, the Council shall take one of the following actions:
  - A. Continue the matter to a date, time, and location certain. Notice of the date, time, and location certain of the continued matter is not required to be mailed, published or posted, unless the matter is not continued to a date, time, and location certain, in which case notice of the continued matter shall be given.
  - B. Remand the matter back to the Planning Commission, or as appropriate, to the Board of Design Review.
  - C. Approve the proposal, with or without certain changes. If Council approval indicates an intention to adopt one or more ordinances to amend the zone map, text, or both, then the City Attorney shall prepare the ordinance with findings. Ordinances shall thereafter be adopted pursuant to the City Charter. The City Council shall adopt or approve written findings which demonstrate that adoption will comply with applicable approval criteria.
  - D. Reject the proposed ordinance.
  - E. The City Council shall adopt or approve written findings which demonstrate that adoption of the proposed ordinance will or will not comply with applicable approval criteria.
13. Not more than five (5) calendar days after the date of the adoption or rejection of an ordinance, the Director shall mail or otherwise submit notice to the Department of Land Conservation and Development (DLCD) on DLCD forms provided for such notice.

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14. Not more than seven (7) calendar days after the date of the adoption or rejection of an ordinance, the Director shall mail or otherwise submit notice to persons who testified orally or in writing to the Planning Commission, Board of Design Review, or City Council while the public record was open regarding the proposed ordinance. The notice shall include at least the following information:
  - A. A brief summary of the ordinance.
  - B. The date of the decision on the ordinance.
  - C. The place where and the time when the ordinance and related findings may be reviewed.
  - D. A summary of the requirements for appealing the City decision on the ordinance under ORS 197.830 to 197.845.

**50.53. Expedited Land Division**

An application for and any appeal of an expedited land division shall be subject to the process provisions in ORS 197.360 through ORS 197.380.



**50.55. Conduct of Planning Commission and Board of Design Review Hearing**

1. At the beginning of a hearing an announcement shall be made to those in attendance that:
  - A. Lists the applicable approval criteria by Development Code section number and Comprehensive Plan section number.
  - B. Testimony, arguments and evidence must be directed toward the applicable criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the application.
  - C. Failure to raise an issue accompanied by statements or evidence with sufficient specificity to afford the decision making authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
  - D. Failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damages in circuit court.
  - E. The decision making authority must be impartial and that members of the decision making authority shall not have any bias or personal or business interest in the outcome of the application. Prior to the receipt of any testimony, members of the decision making authority must announce any ex parte contacts. The decision making authority shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest, or ex parte contacts.
  - F. States that if any member of the decision making authority has visited the site, they should describe generally what was observed.
  - G. Summarizes the procedure of the hearing.
2. After the announcements described in Section 50.55.1, the Chair shall call for presentation of the staff report. Staff shall describe the proposal and provide a recommendation.

50.55.

3. After the presentation of the staff report, the Chair shall call for the applicant's testimony.
4. After the applicant's testimony, the Chair shall call for other evidence or testimony in the following sequence unless the decision making authority consents to amend the sequence of testimony:
  - A. First, evidence or testimony in support of the application.
  - B. Second, evidence or testimony in opposition to the application.
  - C. Finally, evidence or testimony that is neither in support nor in opposition to the application.
5. The Chair shall call for rebuttal by the applicant. Rebuttal testimony shall be limited to the scope of the issues raised by evidence and arguments submitted into the record by persons in opposition to the application. Should the applicant submit new evidence in aid of rebuttal, the Chair shall allow any person to respond to such new evidence, and provide for final rebuttal by the applicant.
6. The Chair shall offer staff an opportunity to make final comments and answer questions.
7. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Code in a manner consistent with state law.



**50.57. Time Limits on Planning Commission and Board of Design Review Hearing Testimony**

1. The purpose of time limits on testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that hearings conducted by the Planning Commission and the Board of Design Review are conducted in an efficient and expeditious manner. Time limits on testimony shall not be placed on staff presentations. The following time limits on testimony shall be observed during a hearing conducted by the decision making authority unless the decision making authority consents to adjust the time limits in a particular instance:
  - A. Up to and including 20 minutes for the applicant's presentation.
  - B. Up to and including 10 minutes for a representative of a recognized NAC, government or government agency, or other organized group recognized by the Planning Commission or Board of Design Review.
  - C. Up to and including 5 minutes each for other persons.
  - D. Up to and including 5 minutes for rebuttal.
2. The time limits set forth in Section 50.57.1 shall not include time taken by questions from or response to questions of the decision making authority.

**50.58. Testimony, Exhibits, and Other Evidence before the Planning Commission and Board of Design Review.**

1. Any person may present evidence at hearing before the decision making authority on a Type 3 or Type 4 proposal.
2. Any person may submit exhibits or written comments prior to the hearing. All submittals which are more than two (2) letter sized pages must include no fewer than ten (10) complete copies of the materials being submitted. Written comments or exhibits submitted prior to the hearing to be submitted by staff at the hearing must be received by the Director no later than 4:30 p.m. on the day of the scheduled hearing.
3. In order to be made part of the record, written comments or exhibits submitted at the hearing must be filed with the recording secretary and offered to the decision making authority as part of the record. No fewer than ten (10) copies of written comments or exhibits must be provided if those materials are submitted at the hearing.
4. Exhibits or written comments that are merely referred to in testimony but which are not offered to the decision making authority as part of the record in accordance with this Section shall not become part of the record of the proceedings.

**50.60. Appeal of a Type 1 Decision**

1. The decision making authority's decision on a Type 1 application may be appealed only by the applicant. The appeal must be on an Appeal Form provided by the Director and must be received by the Community Development Department within twelve (12) calendar days after signed written notice of the decision was dated and mailed. [ORD 4312; June 2004]
2. Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether it contains at least the following information:
  - A. The case file number designated by the City,
  - B. The name and signature of the applicant as appellant.
  - C. Specification of evidence or written testimony provided with the application to which the decision under appeal is contrary.
  - D. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to prove the error.
  - E. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.60.1 and 50.60.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.
4. The appellate decision making authority on appeal of Type 1 decisions shall be the Planning Commission or Board of Design Review. The Director shall determine the appropriate appellate decision making authority for Type 1 decision appeals based upon the nature and characteristics of the proposal under appeal and any associated application. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Section 50.80 through 50.83. The decision of the designated appellate decision making authority for appeals of Type 1 decisions shall be the final decision and shall not be subject to further appealed to the City Council.

50.60.

5. For appeals of Type 1 decisions filed under Section 50.60, the Director shall mail written notice of an appeal hearing to the appellant not less than twenty (20) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.
6. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report regarding the appeal and shall provide a copy of the staff report and recommendation to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to the public at reasonable cost upon request.
7. Appeal hearings before the Planning Commission or Board of Design Review shall be conducted in accordance with Section 50.80 through 50.83 of this Code. Appeal hearings shall be recorded on audio only or audio and video tape.
8. At the conclusion of the hearing on the appeal, the appellate decision making authority shall take one of the following actions:
  - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
  - B. Reverse or affirm the decision under appeal, with or without conditions or changes.
    1. If the decision making authority takes action pursuant to Section 50.60.8.B, the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.60.9; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.

50.60.8.B.

2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
9. After the public record on the appeal closes, a written decision in the form of a land use order regarding the application shall be prepared and contain the following:
  - A. A statement of the facts that the appellate decision making authority has relied on which demonstrate the decision under appeal is reversed or affirmed based on the criteria relevant to the appeal.
  - B. A statement of conclusions based on the findings.
  - C. If the appellate decision making authority changes conditions of approval, changes denial to approval, changes denial to approval subject to conditions, or changes approval to denial, the order shall include findings explaining the basis for such change and condition.
10. Within approximately seven (7) calendar days from the date that the appellate decision making authority adopts a land use order, the Director shall cause the order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the public record closed.
11. A decision on an appeal is final on the date the signed land use order is dated and mailed.
12. Only one appeal of a Type 1 decision is permitted before the City. Therefore, the notice of a Type 1 decision on appeal shall indicate the decision may be appealed to the Land Use Board of Appeals as provided in ORS 197.805 through ORS 197.860.

50.60.

13. If a decision of the appellate decision making authority is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the appellate decision making authority shall either:
  - A. Hold a hearing on the issue upon which LUBA remanded the decision without opening the record for additional evidence. Notice of the hearing on remand shall be given to all persons who testified either orally or in writing before the appellate decision making authority at the hearing that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the appellate decision making authority. Testimony shall be allowed at the hearing before the appellate decision making authority, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision; or
  - B. Hold a hearing on the issue upon which LUBA remanded the decision and open the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the original hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision. A decision of the appellate decision making authority on remand may be appealed to LUBA.

**50.65. Appeal of a Type 2 Decision**

1. The decision making authority's decision on a Type 2 application may be appealed only by the applicant or by any other person who submitted written evidence prior to the decision of the Director. The appeal must be on an Appeal Form provide by the Director and must be received within twelve (12) calendar days after written notice of the decision was dated and mailed. [ORD 4312; June 2004]
2. Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:
  - A. The case file number designated by the City.
  - B. The name and signature of each appellant.
  - C. Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.
  - D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
  - E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
  - F. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.65.1 and 50.65.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.

50.65.

4. Except for the appeals of Director's Interpretation (Section 40.25), the appellate decision making authority on appeal of Type 2 decisions shall be the Planning Commission or Board of Design Review. The Director shall determine the appropriate appellate decision making authority for Type 2 decision appeals based upon the nature and characteristics of the proposal under appeal and any associated application. The appeal hearing for Type 2 decisions shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Section 50.80 through 50.83. The decision of the designated appellate decision making authority for appeal of Type 2 decisions shall be the final decision and shall not be subject to further appeal to the City Council.
5. The appellate decision making authority for Director's Interpretation (Section 40.25) shall be the City Council. The appeal hearing for Director's Interpretation shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in accordance with Section 50.85 through 50.88 except as otherwise required by statute.
6. For appeals of Type 2 decisions filed under Section 50.65, the Director shall mail written notice of an appeal hearing to parties listed in Section 50.65.1 not less than twenty (20) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.
7. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report and shall provide a copy of the staff report to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to members of the public at reasonable cost upon request.
8. Appeal hearings before the Planning Commission or Board of Design Review shall be conducted in accordance with Section 50.80 through 50.83 of this Code. Appeal hearings shall be recorded on audio only or audio and video tape.



50.65.

9. At the conclusion of the hearing on the appeal, the appellate decision making authority shall take one of the following actions:
  - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
  - B. Reverse or affirm the decision under appeal, with or without conditions or changes.
    1. If the decision making authority takes action pursuant to Section 50.65.9.B, the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.65.10; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.
    2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
10. After the public record on the appeal closes, a written decision in the form of a land use order regarding the application shall be prepared and contain, at a minimum, the following:
  - A. A statement of the facts that the appellate decision making authority has relied on which demonstrate the decision under appeal is reversed or affirmed based on the criteria relevant to the appeal.
  - B. A statement of conclusions based on the findings.
  - C. If the appellate decision making authority changes conditions of approval, changes denial to approval, changes denial to approval subject to conditions, or changes approval to denial, the order shall include findings explaining the basis for such change and condition.

50.65.

11. Within approximately seven (7) calendar days from the date that the appellate decision making authority adopts a land use order, the Director shall cause the order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the public record closed.
12. A decision on an appeal is final on the date the signed land use order is dated and mailed.
13. Only one appeal of a Type 2 decision is permitted before the City. Therefore the notice of a Type 2 decision on appeal shall indicate the decision may be appealed to the Land Use Board of Appeals as provided in ORS 197.805 through ORS 197.860.
14. If a decision of the appellate decision making authority is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the appellate decision making authority shall either:
  - A. Hold a hearing on the issue upon which LUBA remanded the decision without opening the record for additional evidence. Notice thereof shall be given to all persons who testified either orally or in writing before the appellate decision making authority at the hearing that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the appellate decision making authority. Testimony shall be allowed at the hearing before the appellate decision making authority, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision; or

50.65.14.

- B. Hold a hearing on the issue upon which LUBA remanded the decision and open the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the appeal hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the appellate decision making authority based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the appellate decision making authority shall render a written decision.



**50.70. Appeal of a Type 3 Decision**

1. The decision making authority's decision on a Type 3 application may be appealed only by the applicant or any other person who participated by providing either oral or written evidence on the record leading to the decision by the decision making authority. The appeal must be on an Appeal Form provided by the Director and must be received within ten (10) calendar days after the signed written land use order of the decision making authority was dated and mailed. [ORD 4312; June 2004]
2. Within seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:
  - A. The case file number designated by the City.
  - B. The name and signature of each appellant.
  - C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.
  - D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
  - E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
  - F. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.70.1 and 50.70.2 is jurisdictional and deprives the City Council of authority to consider the appellant's submittal and the appellant of an opportunity for the appellate decision making authority to hear an appeal.

50.70.

4. The appellate decision making authority on appeal of Type 3 decisions shall be the City Council. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both.
5. The record shall consist of the following:
  - A. All staff reports and memoranda prepared regarding the proposal that were presented to the decision making authority.
  - B. All written testimony and all exhibits, maps, documents or other written materials presented to and not rejected by the decision making authority during the proceedings on the proposal.
  - C. The land use order of the decision making authority.
  - D. The minutes of the decision making authority proceedings regarding the proposal.
  - E. The appellant may request, and the City Council may allow, the appeal hearing be conducted on the record established at the decision making authority public hearing. If such a request is made and granted, a transcript of the decision making authority proceedings is required. The appellant shall remit a fee to cover the cost of the transcript of the decision making authority's proceedings within five days after the Planning Director estimates the cost of the transcript. Within ten days of notice of completion of the transcript, the appellant shall remit the balance due on the cost of the transcript. In the event that the Council denies the request for an on the record appeal hearing, and holds a *de novo* hearing, the transcript fee may be refunded. If the transcription estimate exceeds the transcription cost, the balance shall be refunded to the appellant.
6. The appeal hearing shall be conducted in accordance with Section 50.85 through 50.88 except as otherwise required by statute.
7. For appeals of Type 3 decisions filed under Section 50.70, the City shall mail written notice of an appeal hearing to parties described in Section 50.45.2 not less than ten (10) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.

50.70.

8. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report and shall provide a copy of the staff report to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to members of the public at reasonable cost upon request.
9. At the conclusion of the hearing on the appeal, the appellate decision making authority shall take one of the following actions:
  - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Chair. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
  - B. Reverse or affirm the decision under appeal, with or without conditions or changes.
    1. If the decision making authority takes action pursuant to Section 50.70.9.B, the decision making authority shall announce a brief summary of the basis for the decision, and that a land use order will be issued as provided in Section 50.70.10; provided, the proceedings may be continued for the purpose of considering such land use order without taking new testimony or evidence.
    2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
  - C. Remand the decision to the decision making authority for further proceedings consistent with the decision on appeal provided that the appellate decision making authority first determines whether the remand would conflict with the City's obligation under ORS 227.178 to issue a timely final decision. If the decision is to remand, the purpose of the remand, including any specific procedures or subjects to be addressed shall be directed to the decision making authority.

50.70.

10. After the public record on the appeal closes, a written decision in the form of a land use order regarding the application shall be prepared and contain the following:
  - A. A statement of the facts that the appellate decision making authority finds show the decision under appeal is reversed or affirmed based on the criteria relevant to the appeal.
  - B. A statement of conclusions based on the findings.
  - C. If the appellate decision making authority changes conditions of approval, changes denial to approval, changes denial to approval subject to conditions, or changes approval to denial, the order shall include findings explaining the basis for such change and condition.
11. Within approximately ten (10) calendar days from the date that the appellate decision making authority votes on the motion regarding the appeal, the Director shall cause a land use order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the Planning Commission, Board of Design Review, City Council, or all while the public record on the appeal was open. [ORD 4312; June 2004]
12. A decision on an appeal is final on the date the signed land use order is dated and mailed. A land use order may consist of an ordinance where appropriate. The Mayor or designee shall sign the land use order.
13. If a decision of the City Council is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the City Council shall either:



**50.70.13.**

- A. Hold a hearing on remand if the issue upon which LUBA remanded the decision can be resolved by the City Council without reopening the record for additional evidence. Notice thereof shall be given to all persons who testified either orally or in writing before the City Council at the hearing or hearings that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the City Council. Testimony shall be allowed at the hearing before the City Council, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the City Council shall render a written decision; or
- B. Remand the application, ordinance, or both to the decision making authority if the issue upon which LUBA remanded the decision requires reopening the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the initial public hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the decision making authority shall render a written decision. A decision of the decision making authority on remand may be appealed to the City Council pursuant to Section 50.70.



**50.75. Appeal of a Type 4 Decision**

1. The decision making authority's recommendation on a Type 4 application may be appealed only by the applicant or any other person who participated by providing either oral or written evidence leading to the decision of the decision making authority. The appeal must be received within ten (10) calendar days after the signed written land use order of the decision making authority was dated and mailed.
2. The Director shall determine whether an appeal contains at least the following information:
  - A. The case file number designated by the City.
  - B. The name and signature of each appellant.
  - C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.
  - D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
  - E. The specific approval criteria, condition, or both being appealed, the reasons why the finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
  - F. The appeal fee, as established by resolution of the City Council.
3. Failure to comply with the requirements of Sections 50.75.1 and 50.75.2 is jurisdictional and deprives the appellant of an opportunity for the appellate decision making authority to hear an appeal.

50.75.

4. The appellate decision making authority on appeal of Type 4 decision shall be the City Council. The appeal hearing shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Section 50.85 through 50.88 except as otherwise required by statute.
5. For appeals filed under Section 50.75, the City shall mail written notice of an appeal hearing to parties described in Section 50.75.1 not less than twenty (20) calendar days prior to the appeal hearing, but need not post or publish the notice in a newspaper.
6. Not less than seven (7) calendar days before the date of the appeal hearing, the Director shall prepare and make available to the public, for review and inspection, a copy of the staff report and shall provide a copy of the staff report to the appellate decision making authority and to the appellant. The Director shall provide a copy of the staff report to the public at reasonable cost upon request.
7. At the conclusion of the City Council hearing in the appeal of a Type 4 decision, the Council shall take one of the following actions:
  - A. Continue the hearing to a date, time, and location certain, which shall be announced by the Mayor. Notice of the date, time, and location certain of the continued hearing is not required to be mailed, published, or posted, unless the hearing is continued without announcing a date, time, and location certain, in which case notice of the continued hearing shall be given as though it was the initial hearing.
  - B. Remand the decision to the decision making authority for further proceedings consistent with the Council's decision unless the remand would conflict with the City's obligation under ORS 227.178 to issue a timely final decision. If the decision is to remand, the purpose of the remand, including any specific procedures or subjects to be addressed shall be directed to the decision making authority.
  - C. Reverse or affirm the decision being appealed, with or without changes.

50.75.7.C.

1. If Council indicates an intention to adopt one or more ordinances to amend the zone map, text, or both pursuant to Section 50.75.7.C, then the City Attorney shall prepare the ordinance. Ordinances shall thereafter be adopted pursuant to the City Charter. The City Council shall adopt or approve written findings which demonstrate either that approval will comply with applicable approval criteria or that in the case of denial, the approval criteria gave not been satisfied.
2. Provisions for holding a record open or continuing a hearing set forth in ORS 197.763 (6) shall apply under this Ordinance in a manner consistent with state law.
8. After the public record on the appeal closes, a written decision in the form of a land use order.
9. Within approximately seven (7) calendar days from the date that the appellate decision making authority adopts a final decision under appeal, the Director shall cause a land use order to be signed, dated, and mailed to the appellant and other persons who appeared orally or in writing before the Planning Commission, Board of Design Review, City Council, or all while the public record on the appeal was open.
10. A decision on an appeal is final on the date the signed land use order is dated and mailed. A land use order may include an ordinance.
11. Only one appeal of a decision is permitted before the City. Therefore the notice of a decision on appeal shall indicate the decision may be appealed to the Land Use Board of Appeals as provided in ORS 197.805 through ORS 197.860.
12. If a decision of the City Council is remanded to the City by the State of Oregon Land Use Board of Appeals (LUBA), the City Council shall either:

**50.75.12.**

- A. Hold a hearing on remand if the issue upon which LUBA remanded the decision can be resolved by the City Council without reopening the record for additional evidence. Notice thereof shall be given to all persons who testified either orally or in writing before the City Council at the hearing or hearings that led to the decision remanded by LUBA. The notice shall set forth issues on remand that will be considered by the City Council. Testimony shall be allowed at the hearing before the City Council, except that testimony shall be limited to the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the City Council shall render a written decision; or
- B. Remand the application, ordinance, or both to the decision making authority if the issue upon which LUBA remanded the decision requires reopening the record for additional evidence. Notice of the hearing on remand shall be given in the same manner in which the initial public hearing notice was provided. The notice shall list the applicable approval criteria and state that testimony will be limited to the criteria or the issues upon which LUBA remanded the decision to the City. If the application on remand is amended in a manner which changes the applicable criteria or the factual basis on which LUBA or the City Council based its decision regarding an issue or issues not remanded, the notice shall list the applicable approval criteria and state that testimony may be provided on the full scope of the amended application. At the conclusion of the hearing, the decision making authority shall render a written decision. A decision of the decision making authority on remand may be appealed to the City Council pursuant to Section 50.75.

**50.80. Conduct of Planning Commission or Board of Design Review Appeal Hearing**

1. The Planning Commission and the Board of Design Review shall conduct appeal hearings pursuant to the requirements of this Section.
2. At the beginning of the appeal hearing, an announcement shall be made to those in attendance that:
  - A. States the general nature of the appeal.
  - B. Lists the applicable approval criteria.
  - C. Testimony, arguments, and evidence must be directed toward the applicable criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the decision.
  - D. Failure to raise an issue accompanied by statements or evidence sufficient to afford the appellate decision making authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
  - E. Failure of the applicant, applicant as appellant, or appellant to raise constitutional or other issues relating to the proposed condition of approval with sufficient specificity to allow the City or its designee to respond to the issue precludes an action for damages in circuit court.
  - F. The appellate decision making authority must be impartial and that members of the appellate decision making authority shall not have any bias or personal or business interest in the outcome of the application. Members of the appellate decision making authority must announce any ex parte contacts. The appellate decision making authority shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest, or ex parte contacts.
  - G. States that if any member of the appellate decision making authority has visited the site, they describe generally what was observed.
  - H. Summarize the procedure of the hearing.

50.80.

3. The Chair shall next ask if there is any challenge to a member of the appellate decision making authority right to consider the appeal. Unless the challenge is based upon information disclosed pursuant to Section 50.80.2.F. and G, a challenging party must deliver a written document stating the reasons and authority for such challenge to the member challenged and the City at least 24 hours prior to the hearing.
4. After the announcements and statements of Sections 50.80.2 and 50.80.3 are concluded, the Chair shall call for presentation of the staff report. Staff shall describe the proposal and explain the reasons behind the Director's decision.
5. The Chair shall invite testimony on the appeal to take place in the following order unless the appellate decision making authority consents to amend the order of testimony:
  - A. The applicant, if not the appellant.
  - B. The applicant as appellant.
  - C. The appellant, if not the applicant.
  - D. Testimony in support of the appeal.
  - E. Testimony in opposition to the appeal.
  - F. Testimony that is neither in support nor in opposition to the appeal.
  - G. Rebuttal testimony by the appellant, if the appellant is the applicant. The appellant's rebuttal is limited to responding to testimony previously submitted and shall be based solely on the evidence in the record.
6. The Chair shall allow for final comments from staff.
7. The appellate decision making authority shall deliberate and make a decision. Deliberations may include questions to or testimony by City staff regarding the criteria, evidence and testimony in the record.



**50.82. Time Limits on Planning Commission or Board of Design Review Appeal Hearing Testimony**

1. The purpose of time limits on testimony at an appeal hearing before the Planning Commission or Board of Design Review is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and expeditious manner. Time limits on testimony shall not be placed on staff presentations. The following time limits on testimony shall be observed during a hearing conducted by the appellate decision making authority unless the appellate decision making authority consents to adjust the time limits in a particular instance:
  - A. Up to and including 20 minutes for the applicant, if not the appellant, or the applicant as appellant's presentation.
  - B. Up to and including 20 minutes for the appellant's, if not the applicant, presentation.
  - C. Up to and including 10 minutes for a representative of a recognized NAC, government or government agency, or other organized group recognized by the appellate decision making authority.
  - D. Up to and including 5 minutes each for other persons.
  - E. Up to and including 5 minutes of rebuttal for the applicant, if not the appellant, or the appellant who is the applicant.
2. The time limits set forth in Section 50.82.1 shall not include time taken by questions from or response to questions of the appellate decision making authority.

**50.83. Testimony, Exhibits, and Other Evidence before the Planning Commission and Board of Design Review.**

1. Any person may present testimony at a hearing before the appellate decision making authority on an appeal of a Type 1 or Type 2 decision.
2. Any person may submit exhibits or written comments prior to the hearing. All submittals which are more than two (2) letter sized pages must include of no fewer than ten (10) complete copies of the materials being submitted. Written comments or exhibits submitted prior to the hearing to be submitted by staff at the hearing must be received by the Director no later than 4:30 p.m. on the day of the scheduled hearing.
3. Written comments or exhibits submitted at the hearing must be filed with the recording secretary and offered into the record before the appellate decision making authority. No fewer than ten (10) copies of written comments or exhibits must be provided if those materials are submitted at the hearing.
4. Exhibits or written comments that are merely referred to in testimony but which are not offered into the record before the appellate decision making authority in accordance with this Section shall not become part of the record of the proceedings.

Conduct of City Council Appeal Hearing

**50.85. Conduct of the City Council Appeal Hearing**

1. The City Council shall conduct a hearing on appeal pursuant to the requirements of this Section and the Municipal Code except as otherwise required by statute. At the beginning of the appeal hearing, the Chair shall make an announcement to those in attendance that:
  - A. States the general nature of the appeal.
  - B. Lists the applicable approval criteria.
  - C. Testimony, arguments, and evidence must be directed toward the applicable approval criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the decision.
  - D. Failure to raise an issue accompanied by statements or evidence sufficient to afford the appellate decision making authority and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.
  - E. Failure of the applicant to raise constitutional or other issues relating to the proposed condition of approval with sufficient specificity to allow the City or its designee to respond to the issue precludes an action for damages in circuit court.
  - F. The appellate decision making authority must be impartial and that members of the appellate decision making authority shall not have any bias or personal or business interest in the outcome of the application. Members of the appellate decision making authority must announce any ex parte contacts. The appellate decision making authority shall afford parties an opportunity to challenge any member thereof based on bias, conflicts of interest, or ex parte contacts.
  - G. States that if any member of the appellate decision making authority has visited the site, they describe generally what was observed.
  - H. Summarizes the procedure of the hearing.

Conduct of City Council Appeal Hearing

50.85.

2. The Chair shall next ask if there is any challenge to the Mayor's or a Councilor's right to consider the appeal. Unless the challenge is based upon information revealed pursuant to Section 50.85.1.F and G, a challenging party must deliver a written document at least 24 hours prior to the hearing setting forth the reasons and authority for such challenge to the member challenged and the Mayor.
3. After the announcements and statements of Sections 50.85.1 and 2 are made, the Chair shall call for presentation of the staff report. Staff shall describe the proposal and provide a recommendation.
4. If the appeal hearing for a Type 3 decision is an *on the record* hearing, the Chair shall state that City Council review is confined to the record established before the decision making authority, that only persons who testified either orally or in writing before the decision making authority may testify before the City Council, and that the only arguments that may be raised before the City Council are arguments that were raised in the letter of appeal and those arguments raised before the decision making authority with sufficient specificity to enable the decision making authority to respond.
5. If the appeal hearing is to consider an appeal of a Type 4 decision, the Chair shall state that City Council review is not confined to the arguments that were raised in the letter of appeal.
6. The Chair shall invite testimony on the appeal to take place in the following order unless the appellate decision making authority consents to amend the order of testimony:
  - A. The applicant, if not the appellant.
  - B. The appellant, if not the applicant.
  - C. Testimony in support of the appeal.
  - D. Testimony in opposition to the appeal.
  - F. Testimony that is neither in support nor in opposition to the appeal.

50.85.6.

- G. Rebuttal testimony by the appellant, if the appellant is the applicant. The appellant's rebuttal is limited to responding to testimony previously submitted and shall be based solely on the evidence in the record.
- 7. The Chair shall allow final comments from staff.
- 8. The Council shall deliberate and make a decision. The Council deliberations may include questions to or testimony by City staff regarding the criteria, evidence and testimony in the record.

**50.87. Time Limits on City Council Appeal Hearing Testimony.**

1. The purpose of time limits on testimony at an appeal hearing before the City Council is to provide persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and expeditious manner. Time limits on testimony shall not be placed on staff presentations. The following time limits on testimony shall be observed during a hearing conducted by the appellate decision making authority unless the appellate decision making authority, subject to the right of the Mayor, with Council consent, waive or extend the time limits in a particular instance:
  - A. Up to and including 15 minutes for the applicant, if not the appellant, or applicant as appellant's presentation.
  - B. Up to and including 15 minutes for the appellant's presentation, if not the applicant.
  - C. Up to and including 10 minutes for a representative of a recognized NAC, homeowner association, government or government agency, or other organized group recognized by the City Council.
  - D. Up to and including 5 minutes each for other persons.
  - E. Up to and including 5 minutes of rebuttal for the applicant, if not the appellant, or the appellant who is the applicant.
2. The time limits set forth in Section 50.87.1 shall not include time taken up by questions from Council or responses thereto.

**50.88. Testimony, Exhibits, and Other Evidence before the City Council.**

1. For appeal hearings which are conducted on the record, only those persons who testified either orally or in writing before the decision making authority may testify either orally or in writing before the Council on appeal. Such testimony shall be limited to argument regarding issues raised before the decision making authority. The only issues that may be raised in an appeal hearing are the issues in the written appeal and shall be based solely upon the record of the proceedings before the decision making authority. Enlargements, illustrations, maps or other exhibits may be submitted as long as they are part of the record or are entirely derived from evidence in the record.
2. For appeal hearings which are conducted *de novo*, any interested person may testify either orally or in writing before the Council on appeal. Such testimony shall be limited to addressing the applicable approval criteria or other criteria in the Comprehensive Plan or Development Code which the person believes to apply to the decision.
3. Subject to the limitations in Sections 50.88.1 and 50.88.2, written testimony may be submitted prior to the hearing. All submittals which are more than two (2) letter sized pages must include no fewer than ten (10) complete copies of the materials being submitted. Written testimony submitted prior to the hearing must be received by the City Recorder by 5:00 p.m. on the day of the scheduled hearing.
3. Subject to the limitations in Sections 50.88.1 and 50.88.2, written testimony submitted at the hearing must be filed with the recording secretary and offered into the record before the City Council. No fewer than ten (10) copies of written comments or exhibits must be provided if those materials are submitted at the hearing.
4. Written evidence that is merely referred to in testimony but which is not provided to the City Council pursuant to this section shall not become part of the record of the proceedings.
5. At appeal hearings which are conducted on the record, written material that attempts to present new evidence or raises new issues which were not presented or raised before the decision making authority shall be rejected.

**50.89. Withdrawal of an Appeal.**

1. Before the close of an appeal hearing in front of any appellate decision making authority, any appellant may withdraw his appeal.
2. Withdrawal of an appeal is subject to the following:
  - A. The party may withdraw the appeal on its own motion, which may be submitted to the appellate decision making authority orally or in writing.
  - B. No part of the appeal fee will be refunded.
  - C. No one may re-file a withdrawn appeal.
  - D. Where multiple people or parties sign and file a single appeal document, all must consent to the withdrawal of the appeal.
3. In addition to all the requirements of Section 50.89.1 and 2, if all appeals in a matter are withdrawn, the appellate decision making authority loses jurisdiction over the action. The underlying decision is automatically re-instated under its original date of final decision.



**50.90. Expiration of a Decision**

1. Except as otherwise specifically provided in a specific decision or in this Code, a final decision made pursuant to this Chapter shall expire automatically on the following schedule unless the approval is enacted either through construction or establishment of use within the specified time period.
  - A. Five (5) years from the effective date of decision: Final Planned Unit Development (40.15.15.6) where phasing of the development is proposed.
  - B. Two (2) years from the effective date of decision:
    - Accessory Dwelling Unit (40.05.15.1)
    - Administrative Conditional Use (40.15.15.3)
    - Alteration of a Landmark (40.35.15.1)
    - Conditional Use (40.15.15.4)
    - Demolition of a Landmark (40.35.15.3)
    - Design Review Two (40.20.15.2)
    - Design Review Three (40.20.15.3)
    - Emergency Demolition of a Landmark (40.35.15.2)
    - Expedited Land Division (40.45.15.7)
    - Final Land Division (40.45.15.6)
    - Final Planned Unit Development (40.15.15.6) when there is no phasing to the development
    - Flexible Setback for Individual Lot With Endorsement (40.30.15.1)
    - Flexible Setback for Individual Lot Without Endorsement (40.30.15.2)
    - Flexible Setback for a Proposed Residential Land Division (40.30.15.3)
    - Flexible Setback for a Proposed Annexation (40.30.15.4)
    - Lot Line Adjustment (40.45.15.1)
    - Major Adjustment (40.10.15.3)
    - Major Adjustment - All Regional Center zones and South Tektronix Station Community Major Pedestrian Routes (40.10.15.4)
    - Major Modification of a Conditional Use (40.15.15.2)
    - Minor Adjustment (40.10.15.1)
    - Minor Adjustment - All Regional Center zones and South Tektronix Station Community Major Pedestrian Routes (40.10.15.2)
    - Minor Modification of a Conditional Use (40.15.15.1)

50.90.1.B.

New Construction in a Historic District (40.35.15.4)  
Preliminary Fee Ownership Partition (40.45.15.4)  
Preliminary Fee Ownership Subdivision (40.45.15.5)  
Preliminary Partition (40.45.15.2)  
Preliminary Planned Unit Development (40.15.15.5)  
Preliminary Subdivision (40.45.15.3)  
Public Transportation Facility (40.57.15.1)  
Tree Plan One (40.90.15.1)  
Tree Plan Two (40.90.15.2)  
Tree Plan Three (40.90.15.3)  
Variance (40.95.15.1)  
Wireless Facility One (40.96.15.1)  
Wireless Facility Two (40.96.15.2)  
Wireless Facility Three (40.96.15.3)  
Zero Side or Zero Rear Yard Setback for a Proposed Residential  
Land Division (40.30.15.5)  
Zero Side Yard Setback for a Proposed Non-Residential Land  
Division (40.30.15.6)

C. One (1) year from the effective date of the decision:

Design Review Compliance Letter (40.20.15.1)  
Home Occupation One (Section 40.40.15.1)  
Home Occupation Two (Section 40.40.15.2)  
Loading Determination (Section 40.50.15.1)  
Parking Requirement Determination (Section 40.55.15.1)  
Shared Parking (Section 40.55.15.2)  
Signs (Section 40.60.15.1)  
Solar Access (Section 40.65.15.1)  
Use of Excess Parking (Section 40.55.15.3)

D. No expiration date:

Director's Interpretation (40.25.15.1)  
Discretionary Annexation Related Zoning Map Amendment  
(40.97.15.4).  
Legislative Zoning Map Amendment (40.97.15.2)  
Non-Discretionary Annexation Related Zoning Map Amendment  
(40.97.15.3)  
Quasi-Judicial Zoning Map Amendment (40.97.15.1)  
Street Vacation (40.75.15.1)  
Text Amendment (40.58.15.1)  
Tree Plan Four (40.90.15.4)

[ORD 4265; September 2003] [ORD 4332; November 2004]

50.90.

2. The effective date of the decision for Type 1, Type 2, or Type 3 applications shall be the date that the signed land use order is dated and mailed, unless appealed. If a Type 1, Type 2, or Type 3 application is appealed, the effective date of the decision shall be the date of the appellate decision making authority's signed land use order is dated and mailed. The effective date of decision for a Type 4 application is thirty (30) calendar days after the Mayor signs the ordinance, unless an emergency is declared in which case the ordinance is effective immediately upon signature of the Mayor.
3. A decision shall expire according to Section 50.90.1 unless one of the following occurs prior to the date of expiration:
  - A. An application for an extension is filed pursuant to Section 50.93; or
  - B. The development authorized by the decision has commenced as defined herein.
    1. The use of the subject property has changed as allowed by the approval;
    2. In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place; or
    3. In the case of development authorized to be done in phases, each phase must be commenced within the time specified in the approval, or within two (2) years of completion of the prior phase if no time is specified.
    4. The 45 day to five (5) year time begins from the effective date of the decision. Appeal of a decision to LUBA does not extend the time.

**50.93.        Extension of a Decision**

1.     An application to extend the expiration date of a decision made pursuant to this Code may be filed only before the decision expires as provided in Section 50.90 or before the decision expires as provided in the appropriate subsection of the specific application contained in Chapter 40 (Applications).
2.     Except for Director's Interpretation (Section 40.25), Home Occupation (Section 40.40), Loading Determination (Section 40.50), Parking Requirement Determination (Section 40.55.15.1), Shared Parking (Section 40.54.15.2), Use of Excess Parking (Section 40.54.15.3), Sign (Section 40.60), Solar Access (Section 40.65), Temporary Mobile Sales (Section 40.80.15.1), Temporary Non-Mobile Sales (Section 40.80.15.2), all Tree Plan (Section 40.90), and all Zoning Map Amendment (Section 40.97) applications, not more than one extension may be granted for a maximum of two (2) years.
3.     An application for an extension is subject to a Type 2 procedure.
4.     An application for an extension shall be granted if the applicant demonstrates that it complies with the following:
  - A.     It is not practicable to commence development within the time allowed for reasons beyond the reasonable control of the applicant.
  - B.     There has been no change in circumstances or the applicable regulations or Statutes likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension is sought.

**50.95. Modification of a Decision**

1. An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2 or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.
2. An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.
3. An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120 day requirement pursuant to ORS 227.178.
4. Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.
5. An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.
6. The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision making authority determines any one of the following:

**50.95.6.**

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of condition to correct the mistake.
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
- D. New or modified condition would better accomplish the purpose of the original condition.

Re-Application or Supplemental  
Application After Denial

**50.99. Re-Application or Supplemental Application After Denial**

1. If an application is denied by the decision making authority and no appeal taken, or upon appeal the appellate decision making authority affirms the denial of the decision making authority or denies the appeal, no new request for the same or substantially similar proposal shall be filed within one year after the date of the final decision subject to pre-application conference, a neighbor unless the denial is specifically stated by the decision maker to be without prejudice.
2. Only a person whose application is denied following completion of all local procedures, including local appeals allowed by right, may submit to the City a supplemental application to allow any or all other uses allowed under the existing comprehensive plan map designation for the property, pursuant to ORS 227.184.
  - A. Such an application shall include a request for any zone change, conditional use, or variance that may be required for approval of each proposal.
  - B. Such an application shall be through review meeting, completeness review, and a Type 3 procedure, provided:
    1. The City shall issue a final decision regarding such an application, including all local appeals, not more than 240 days after the City finds or deems the application to be complete.
    2. The City decision shall include findings describing the reasons for approving or denying a use for which approval is sought under this section and for any zone change or variance requested in the application.
  - C. The fee for an application under this section shall be the sum of the separate fees for each review sought pursuant to the application.

